

REMARKS/ARGUMENTS

Claims 1-32 are pending in the present application. Claims 22-34 have been withdrawn from consideration due to a restriction/election requirement. Claims 1-21 have been rejected. Claims 1 and 21 have been amended.

Applicants respectfully respond to this Office Action.

A. Change of Correspondence Address

A Change of Correspondence Address was filed in the present case on November 10, 2004. A postcard for the Change of Correspondence Address was date stamped by the United States Patent and Trademark Office on November 15, 2004. Copies of the Change of Correspondence Address and the date-stamped postcard are included herewith in Appendix A. Applicants request that the U.S. Patent Office change the correspondence address as requested by the documents that were previously filed.

B. Affirmation of Election

Applicants hereby affirm the election of Group 1, claims 1-21, without traverse.

C. Drawings

The Office Action asked for a "Prior Art" legend to be added to Figures 1 and 2. Applicants respectfully request that the Examiner withdraw this request for the following reasons.

Figure 1 is a "block diagram of the major hardware components of a computer used with the embodiments." Patent Application, Page 6, lines 8-9. The claims include elements that are illustrated in the exemplary embodiment in Figure 1. For example, claim 1 includes "memory of the computer to obtain memory data." The memory and the computer are both illustrated in one exemplary embodiment of Figure 1. Claim 23 also includes "a processor", which is illustrated in one exemplary embodiment shown in Figure 1. Thus, the exemplary embodiment shown in Figure 1 is illustrated and discussed in relation to Applicant's invention.

With respect to Figure 2, the claims include elements that are illustrated in or that relate to the exemplary embodiment in Figure 2. Furthermore, Applicants stated that “Figure 2 is a data and software block diagram that illustrates the typical interactions and interfaces an observing or monitoring computer program has.” Patent Application, Page 6, lines 10-11. However, Applicants did not represent that the embodiment shown in Figure 2 is prior art. Applicants made no such representation and cannot make such a representation now. In the detailed description Applicants noted that “one observer program now commercially available is the Investigator product offered by WinWhatWhere.” Patent Application, Page 11, lines 12-13. “Others include Omniquad Desktop Surveillance, WinGuardian, and Stealth Keyboard Interceptor.” Patent Application, Page 11, lines 13-14. These are examples of observer programs. However, Applicants do not know whether the embodiment shown in Figure 2, including all of the elements shown in Figure 2, is implemented by any of the observer programs and/or is implemented by any of the observer programs in the way it is shown in Figure 2. By placing “Prior Art” on a drawing Applicants are representing that “only that which is old is illustrated.” See M.P.E.P. § 608.02(g). Because Applicants do not know with certainty whether what is illustrated in Figure 2 is prior art, Applicants ask that the Examiner kindly withdraw this requirement.

Applicants respectfully request that the Examiner withdraw the request to add “Prior Art” legends to Figures 1 and 2 for the reasons set forth above.

D. Claims 1-21 Rejected under 35 U.S.C. § 101

The Examiner rejected claims 1-21 under 35 U.S.C. § 101 because “the subject matter of the above noted claims refers to a computer program that is not stated as being contained within any tangible medium.” Office Action, Page 4. Claims 1-21 have been amended to include “embodied in a computer-readable medium.”

E. Rejection of Claims 1-21 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-21 under 35 U.S.C. § 103(a) based on Togawa, U.S. Patent No. 6,240,530 (hereinafter, "Togawa"), and further in view of Drake, U.S. Patent No. 6,006,328 (hereinafter, "Drake"). This rejection is respectfully traversed.

The M.P.E.P. states that

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

M.P.E.P. § 2142.

Applicants respectfully submit that the claims at issue are patentably distinct from Togawa in view of Drake. Neither Togawa nor Drake teach or suggest all of the limitations in the claims.

Claim 1 recites "observer data comprising a plurality of observer program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data." Togawa does not teach or suggest this claim limitation. The Office Action has cited portions of Togawa and Drake as teaching or suggesting these claim elements. Each of these portions cited will be addressed in turn.

The Office Action cited Togawa, Figure 1, s1 in relation to this claim limitation. Figure 1 of Togawa is a flow diagram and s1 is a "virus detection and identification step." Togawa, Figure 1. This does not teach or suggest "observer data comprising a plurality of observer

program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data.”

The Office Action also cited Col. 5, lines 10-19 of Togawa in relation to this claim limitation. The portion of Togawa states the following:

According to a further aspect of the present invention, there is provided an information processing apparatus which includes a memory for storing programs and data for information processing and a processing section for executing the programs to perform various information processing, comprising a virus detection and identification section for detecting a computer virus which infects the information processing apparatus and identifying a type of the detected computer virus, a virus type information registration section for registering information regarding the type of the detected computer virus identified by the virus detection and identification section into a storage area which is access-disabled in an ordinary operation of the information processing apparatus . . .

Togawa, Col. 5, lines 7-19. This does not teach or suggest “observer data comprising a plurality of observer program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data.” All of the claim limitations must be considered. This portion of Togawa teaches virus detection. However, it does not teach or suggest “observer data”, nor does it teach or suggest “observer data comprising a plurality of observer program characteristics”, nor does it teach or suggest “observer program characteristics descriptive of a plurality of observer programs”, etc. Each of the claim limitations must be taught or suggested in the prior art references. None of the following limitations are taught or suggested in this portion of Togawa: “observer data comprising a plurality of observer program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data.”

The Office Action also cited Drake, Figures 4, 5 and Col. 3, lines 31-52, in relation to this claim limitation. The portion in Col. 3 of Drake states the following:

This invention seeks to provide computer software having enhanced security features, to a process which substantially enhances the security of computer software (hereafter referred to as the improved process) and to a method by which to apply said improved process (hereafter referred to as the applicator).

The improved process consists of including computer code to automatically detect tampering of said computer software, and computer code to

prevent the theft of ID-Data by replacing existing vulnerable (to rogue software eavesdropping or attack) software or operating system code with secure equivalents which utilise anti-spy techniques (as described later in this document).

Preferably, the improved process also consists of including computer code to prevent decompilation, reverse-engineering, and disassembly by the inclusion of obfuscating code inserts, and the use of executable encryption.

Preferably, the improved process also consists of including code to prevent execution-tracing and debugging by the use of code designed to detect and prevent these operations.

Drake, Col. 3, lines 31-52.

This portion of Drake does not teach or suggest “observer data comprising a plurality of observer program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data.” It does mention “rogue software eavesdropping” (Col. 3, lines 41-42) and “anti-spy techniques” (Col. 3, lines 43), but these generic terms do not teach or suggest these claim elements. Figure 4 of Drake illustrates the known operation of a rogue eavesdropping program. Drake, Col. 4, lines 13-14. Figure 5 of Drake illustrates the interaction of the components of the updated application. Drake, Col. 4, lines 15-16. Claim 1 specifically requires “observer data comprising a plurality of observer program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data.”

As shown, neither Togawa nor Drake teach or suggest all of the following claim limitations: “observer data comprising a plurality of observer program characteristics descriptive of a plurality of observer programs where the observer programs are programmed to observe activities on a computer system and to create log data.”

Claim 1 also recites “comparing instructions that compare the plurality of observer program characteristics with memory data characteristics to determine whether an observer program is present on the computer.” Togawa does not teach or suggest this claim limitation. The Office Action has cited a portion of Togawa as teaching or suggesting this claim element. This portion of Togawa is as follows:

FIG. 1 illustrates in flow chart a virus extermination method according to an aspect of the present invention. Referring to FIG. 1. the virus extermination

method illustrated includes a virus detection and identification step S1, a memory clearing step S3, an operating system fetching and starting up step S4 and a virus extermination step S5 in order to exterminate a computer virus as a software destroying factor which infects a computer system.

More particularly, in the virus detection and identification step S1, a computer virus as a software destroying factor which infects a computer system is detected and a type of the computer virus is identified. If such an infecting computer virus is detected in the virus detection and identification step S1 (the YES route of step S2), then information stored in all of those areas of a memory which are in a write-enabled state in an ordinary operation of the computer system is cleared in the memory clearing step S3.

Togawa, Col. 8, lines 14-30.

This portion of Togawa does not teach or suggest “comparing instructions that compare the plurality of observer program characteristics with memory data characteristics to determine whether an observer program is present on the computer.” Col. 8, lines 14-30 of Togawa identifies “a virus detection and identification step S1,” Togawa states that if “such an infecting computer virus is detected in the virus detection and identification step S1 . . . , then information stored in all of those areas of a memory . . . is cleared in the memory clearing step S3.” Togawa, Col. 8, lines 25-30. This simply does not teach or suggest “comparing instructions that compare the plurality of observer program characteristics with memory data characteristics to determine whether an observer program is present on the computer.” This claim limitation requires all of the elements therein including (1) “comparing instructions that compare the plurality of observer program characteristics with memory data characteristics”, (2) “to determine whether an observer program is present on the computer.”

Togawa does not teach or suggest anything with respect to observer programs. The Office Action admitted this in stating that “Togawa fails to teach explicitly searching for observer programs.” Office Action, Page 5. Applicants do not agree with the Office Action’s characterization of Togawa as “teach[ing] a system for the detection and removal of computer malware.” Office Action, Page 5. The use of the term “malware” is much broader than what Togawa teaches. The term “malware” cannot be found anywhere in the Togawa reference using a standard text search. The title of Togawa is “Virus extermination method, information processing apparatus and computer-readable recording medium with virus extermination

program recorded thereon.” Togawa appears to only address virus detection and removal and, as a result, Applicants believe generalizing Togawa to “malware” is improper.

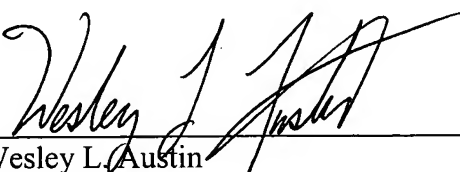
As shown, neither Togawa nor Drake teach or suggest all of the limitations in claim 1. As a result, Applicants respectfully request that the rejection of claim 1 be withdrawn.

As set forth above, neither Togawa nor Drake teach or suggest all of the limitations in claim 1. Claims 2-20 depend directly or indirectly from claim 1. Thus, Applicants respectfully request that the rejection of claims 2-20 be withdrawn for at least the same reasons.

Claim 21 includes similar limitations as claim 1 which were argued above. Thus, Applicants respectfully request that the rejection of claim 21 be withdrawn for at least the same reasons.

Applicants respectfully asserts that claims 1-21 are patentably distinct from the cited references, and requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wesley L. Austin", written over a horizontal line.

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APPENDIX A